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DEPT FOR EUR/OHI

E.O. 12958: DECL: 09/24/2019

TAGS: PHUM LH

SUBJECT: LEGAL FLAWS COULD DERAIL JEWISH PROPERTY
RESTITUTION BILL

REF: VILNIUS 391

Classified By: Charge d'Affaires Damian R. Leader for reasons 1.4(b) and (d).

¶1. (C) Legal deficiencies identified by parliamentary lawyers have called into doubt the prospects of a draft law on Jewish property compensation. The draft law would require the Lithuanian government to pay more than 50 million USD in compensation for Jewish communal property seized by Nazi and Soviet occupation regimes. Parliamentarians and government officials hold divergent views on whether the bill's legal obstacles are insurmountable. GOL officials tell us they remain committed to passage of the bill, though they are not open to the idea of improving the draft to better reflect the interests of the Lithuanian Jewish community. End summary.

¶2. (U) In July, the GOL approved draft legislation for compensation of communal Jewish property expropriated by the Nazi and Soviet occupation regimes (reftel). The plan calls for the GOL to pay 128 million litas (about 54.8 million USD) to a foundation to be determined by the GOL. The first 3 million litas would be paid by March 2011 to support Holocaust survivors; the rest would be paid over 10 years beginning in 2012. The bill was submitted to the Seimas, which was to consider it this autumn. As part of the normal legislative process, the bill was sent to the Seimas legal department for review.

¶3. (U) We understand that the legal department has determined that, if the GOL was treating the Jewish community as a religious confession, it should rely on the existing law on restitution of property to religious groups. But if the purpose was to treat the Jewish community as an ethnic minority, they said, the draft law could violate constitutional principles of nondiscrimination, as it does not provide for compensation to other groups, such as Lithuania's Polish or Russian minorities. Note: the GOL had earlier decided that using the religious-restitution law for Jewish property posed other legal difficulties, and wrote the new draft law specifically to avoid those difficulties.

¶4. (U) The Seimas lawyers also said the payment of 128 million litas in state funds could run afoul of a 2005 Constitutional Court ruling that said the GOL cannot impose a disproportionate burden on society in order to pay restitution claims. The lawyers said the sum should be discussed to determine whether the payment would adversely affect spending in areas such as health care and education. Our reading of that court ruling, however, leads us to conclude that the draft law follows exactly the path directed by the court, in that it includes a provision allowing delay of compensation payments should the government find itself in economic straits.

¶5. (C) The draft law calls for the GOL to designate a foundation to be the recipient of restitution funds and to determine how the money would be spent. Although the bill

intentionally does not say so, Prime Minister Kubilius has assured the local and international Jewish communities that a foundation they established would be given that role. The Seimas lawyers point out that the bill does not say how the foundation would be designated or regulated, nor what its relationship would be with the Jewish communities.

16. (C) The lawyer for (and deputy chairwoman of) the Jewish Community of Lithuania, Faina Kukliansky, told us on September 21 that the legal critique was devastating and would probably prove fatal for the current bill. She said she feared that if the bill died, the Kubilius government would wash its hands of the matter, saying it had fulfilled its pledge to send a restitution bill to the Seimas. Audronius Azubalis, chairman of the Seimas foreign-affairs committee, told us September 22 that he also thought the conclusion that some articles in the draft law were unconstitutional could well mean the end of the bill as it now stands. At the very least, Azubalis said, the bill and the legal conclusions would have to be carefully considered by the Committee on Legal Affairs before the full Seimas could take any action.

17. (C) Emanuelis Zingeris, the only Jewish member of the Seimas and an influential voice on all Jewish issues that come before the GOL or the Seimas, told us September 22 that he remained confident the compensation bill would pass without major changes. But he also said his opinion was based entirely on information he had received from the Jewish-affairs advisor to Vice Minister of Foreign Affairs Sarunas Adomavicius. In a September 23 meeting with the Charge and the British Ambassador, Adomavicius, who oversees Jewish issues for the MFA, said the GOL thinks any problems

posed by the legal conclusions are surmountable. He said he had spoken with Justice Minister Simasius about the bill and was reassured that the bill could pass legal muster. Adomavicius told the Charge and the British Ambassador that the Kubilius government still had the political will to adopt the compensation law, and that Minister Simasius would formally present the bill in the Seimas soon.

18. (C) The British Ambassador urged Adomavicius to use the legal conclusions as an opportunity to bring together key players from the GOL, Seimas and Jewish community to look at any possible problems with the bill and to improve it, but Adomavicius did not respond. In the past, he and other GOL officials have made clear to us that the Kubilius government will work for passage of this bill, but are not open to suggested changes.

19. (C) Comment: Although the GOL has affirmed its commitment to passing the law on compensation for expropriated Jewish communal property, the legal conclusions from the Seimas law department make that path longer and more difficult. The Kubilius government claims it has the political will to push the bill through, but whether it will demonstrate sufficient leadership and enforce party discipline to do so is questionable. Adamovicius told us opposition parties do not oppose this bill. But in tough economic times, some Seimas members will likely seize on the legal conclusions to try to cut the amount of compensation and extend the payment period. There has been no media coverage yet of the legal conclusions, but past coverage of the compensation bill has provoked outrage and inflammatory commentary about Jews receiving exorbitant payments while ordinary Lithuanians are suffering. Thus, media commentators can be expected to embrace the legal conclusions and use them in calls for compensation to be scrapped. We will continue to encourage the government to persevere in moving this bill forward, while still trying to improve it. Despite its serious flaws, the alternative is nothing. End comment.